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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MICHAEL CARROLL,

9 Plaintiff,

10 v.

11 KELSEY STEWART, et al.,

12 Defendants.

13 CASE NO. C15-5170 BHS

14 ORDER ADOPTING REPORT
15 AND RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation (“R&R”)
17 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 94), and
18 Plaintiff’s objections to the R&R (Dkt. 97). Also before the Court is Plaintiff’s motion for
19 an extension to file his objections. Dkt. 98.

20 On March 16, 2015, Plaintiff filed an application to proceed *in forma pauperis* and
21 a proposed civil rights complaint. Dkt. 1. On March 25, 2015, the Court directed service
22 of plaintiff’s complaint. Dkts. 5, 6. On August 31, 2015, Plaintiff filed an amended
complaint. Dkt. 31. On September 14, 2015, Defendant Kelsey filed an answer to
Plaintiff’s amended complaint. Dkt. 33. On November 20, 2015, Defendants Chamberlin,
Theissen, and Westberg answered Plaintiff’s amended complaint. Dkt. 44. On January

1 | 26, 2016, Defendants Jackson and Mitchell answered Plaintiff's amended complaint. Dkt.
2 | 51.

3 | On October 20, 2016, Defendants moved for summary judgment. Dkt. 80. On
4 | November 30, 2016, Plaintiff responded. Dkt. 84. On December 7, 2016, Defendants
5 | replied. Dkt. 85. On December 13, 2017, Plaintiff filed a surreply. Dkt. 86. On January 4,
6 | 2017, Judge Creatura requested additional briefing. Dkt. 87. On January 20, 2017,
7 | Defendants filed a supplemental brief. Dkt. 90. On February 9, 2017, Plaintiff filed a
8 | supplemental brief. Dkt. 90. On February 24, 2017, Plaintiff filed a motion to appoint
9 | counsel. Dkt. 91. On March 3, 2017, Defendants responded. Dkt. 93.

10 | On March 9, 2017, Judge Creatura issued the R&R recommending that the motion
11 | for summary judgment be granted. Dkt. 94. On March 22, 2017, Judge Creatura denied
12 | the motion to appoint counsel and noted the R&R on the Court's calendar for April 14,
13 | 2017. Dkt. 95. On April 18, 2017, having received no objections, the Court entered an
14 | order adopting the R&R. Dkt. 96. Later that same day, Plaintiff filed his objections to the
15 | R&R with an accompanying motion to extend the deadline for his objections. Dkts. 97,
16 | 98.

17 | The district judge must determine de novo any part of the magistrate judge's
18 | disposition that has been properly objected to. The district judge may accept, reject, or
19 | modify the recommended disposition; receive further evidence; or return the matter to the
20 | magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

21 | First, the Court addresses Plaintiff's motion for an extension. Plaintiff has
22 | described good cause for his failure to timely file objections. Plaintiff's objections were

1 due by April 14, 2018. *See* Dkt. 95. On April 12, 2017, the prison in which Plaintiff is
2 incarcerated went on “lockdown” and as a result, April 18 was the first day that Plaintiff
3 could file his objections. Dkt. 98 at 2, 4. Having found good cause for Plaintiff’s delay,
4 the motion to extend the deadline for objections is granted and the Court vacates its
5 previous order adopting the R&R without consideration of Plaintiff’s objections.

6 In his objections Plaintiff argues that Judge Creatura wrongfully declined to
7 consider his due process claims based on *Heck v. Humphrey*, 512 U.S. 477, 483-87
8 (1994). Dkt. 97 at 5 (citing Dkt. 94 at 13 n.3). However, this statement does not
9 accurately reflect the R&R. Rather, Judge Creatura *did* address Plaintiff’s due process
10 claims, stating that his R&R would not address the seemingly apparent bar under *Heck*
11 because the Defendants failed to raise such an argument. Dkt. 94 at 13 n.3.

12 Other than this, Plaintiff does not object to any particular aspect of the R&R.
13 Instead, Plaintiff simply reargues his due process claims in the same way that they were
14 presented to Judge Creatura. *See* Dkt. 84 at 1-42; Dkt. 97. The Court agrees with Judge
15 Creatura’s analysis. The majority of Plaintiff’s claims are time-barred. To the extent they
16 are not, Plaintiff either (1) offers only conclusory statements devoid of specific facts that
17 would entitle him to relief against particular named defendants, *see* Dkt. 94 at 14-15, or
18 (2) “the evidence in the record shows that [his] arrest, detention, and tolling of his
19 supervision were consistent with state and federal law and did not violate his due process
20 rights.” Dkt. 94 at 18.

21 The Court having considered the R&R, Plaintiff’s objections, and the remaining
22 record, does hereby find and order as follows:

- (1) The motion to extend (Dkt. 98) is **GRANTED**;
 - (2) The Court's previous order (Dkt. 96) is **VACATED**;
 - (3) The R&R (Dkt. 94) is **ADOPTED**; and
 - (4) Defendants' motion for summary judgment (Dkt. 80) is **GRANTED**; and
 - (5) The Clerk shall enter judgment for Defendants and close this case.

Dated this 3rd day of May, 2017.



BENJAMIN H. SETTLE
United States District Judge